



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Public

March 21, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

CMORS Medical, P.C.
2130 Grand Concourse Suite B1
Bronx, New York 10458

Mark L. Furman, Esq.
Hoffman, Polland & Furman
220 East 42nd Street
New York, New York 10017

John Thomas Viti, Esq.
NYS Department of Health
90 Church Street - 4th Floor
New York, New York 10007

RE: In the Matter of CMORS Medical, P.C.

Dear Parties:

Enclosed please find the Determination and Amended Order (No. 11-60) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,
REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:djh

Enclosure

**STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

COPY

**IN THE MATTER
OF
CMORS MEDICAL, P.C.**

**DETERMINATION
AND
AMENDED
ORDER**

BPMC-11-60

Service of a Notice of Hearing and Statement of Charges, both dated August 4, 2010 was effected on Respondent, CMORS Medical, P.C. The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York §230 *et seq.* of the Public Health Law of the State of New York ("Public Health Law" or "PHL"). Donald Teplitz, D.O. (Chair), Paul Twist Jr., M.D., and Ruth Horowitz, Ph.D. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Kimberly A. O'Brien Esq., Administrative Law Judge, ("ALJ") served as the Administrative Officer.

The Department of Health ("Department") appeared by John Thomas Viti, Esq., Assistant Counsel. Respondent, CMORS Medical, P.C. ("Respondent") was represented by Counsel Mark L. Furman Esq., and neither Respondent nor Counsel appeared at the hearing held on January 18, 2011, at the Offices of the New York State Department of Health, 90 Church Street, New York, New York. Evidence was received and examined. Transcripts of the proceeding were made. After

consideration of the record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Notice of Hearing and Statement of Charges:	August 4, 2010
Date of Service of Notice of Hearing and Statement of Charges on Department of State :	August 13, 2010
Original Date of Pre hearing <i>Adjourned</i>	September 20, 2010
Original Date of Hearing <i>Adjourned</i>	September 27, 2010
Answer to Charges:	September 14, 2010
Answer to Charges Withdrawn	December 3, 2010
Pre-Hearing Conference Held:	January 7, 2010
Date of Hearing :	January 18, 2011
Location of Hearing:	New York State Department of Health 90 Church Street - 4 th Floor New York, New York 10007
Witnesses:	None
Deliberations Date:	January 18, 2011
Final Transcript Received:	February 1, 2011

PROCEDURAL ISSUES & CONCLUSIONS OF LAW

Respondent's Counsel filed a written answer ("answer") prior to the first scheduled hearing date and his request for an adjournment of the first day of hearing was granted by the Hearing Committee. Subsequently, the parties were granted an indefinite adjournment in contemplation of settlement. Respondent withdrew the answer in a writing dated December 3, 2011 (ALJ Ex. 2). Ultimately, the parties determined that they could not reach a settlement and the matter was put back on the calendar for a hearing to be held on January 18, 2011.

On January 7, 2011 a pre hearing conference was held where the Department offered exhibits into the record and Respondent's counsel confirmed withdrawal of the original answer and represented that Respondent would not be filing a "new" answer. The ALJ ruled that in the absence of the answer the factual allegations and charges of misconduct contained in the Statement of Charges were deemed admitted by Respondent pursuant to Public Health Law §230(10)(c)(2) and the Hearing Committee would make a penalty determination. On January 17, 2011 via e-mail communication, Respondent's Counsel informed the court that Respondent would not appear at the hearing on January 18, 2011 either in person or by a representative.

STATEMENT OF CASE

Respondent is charged with two (2) specifications of professional misconduct as set forth in §6530 of the Education Law of the State of New York ("Education Law"). Specifically, Respondent is charged with professional misconduct by reason of willfully failing to comply with §1503 New York Business Corporation Law ("Business Corporation Law") and failing to comply with State law by willfully and/or grossly negligently failing to comply with substantial provisions of State law governing the practice of Medicine New York Education Law §6530(12) & §6530(16). All the factual allegations and specifications of misconduct contained in the Statement of Charges are

deemed admitted. A copy of the Notice of Hearing and the Statement of Charges is attached to this Determination and Order as Appendix 1.

FINDINGS OF FACT

The following Findings of Fact were made after consideration of the entire record in this matter. Numbers below in parentheses refer to exhibits ("Ex.") or transcript pages ("Tr. "). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous, unless otherwise specified. Having heard argument and considered the documentary evidence presented, the Hearing Committee hereby makes the following findings of fact:

1. Pursuant to Article 15 of the Business Corporation Law, only licensed physicians may organize, hold stock in, direct and/or be an officer of a medical professional service corporation ("PC"). Respondent CMORS MEDICAL, P.C. evaded the legal restrictions on incorporation, ownership, and/or control of a medical PC by falsely representing to the New York State Department of State and New York State Education Department that legally qualified individual(s) incorporated, owned, operated and/or controlled the medical professional service corporation (Ex. 2 & 6).
2. Unqualified individual(s), who were not licensed to practice medicine, were operating and controlling Respondent, and handling its financial affairs (Ex. 2&6).

DISCUSSION & CONCLUSIONS

Respondent is charged with two (2) specifications alleging professional misconduct within the meaning of §6530 of the Education Law, and Respondent made no appearance at the hearing and offered nothing to mitigate the specifications of misconduct that have been deemed admitted by the Respondent pursuant to PHL§ 230(10)(c). The Hearing Committee concludes that all factual allegations and specifications of misconduct contained in the Statement of Charges should be

sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee realizes that a professional corporation is penalized differently than an individual physician. There is no physician running this corporation and the Hearing Committee concurs with the Department that an annulment of the corporation is the appropriate penalty for its failure to comply with State laws regarding the practice of medicine. Annulment is authorized under § 1503 (f) of the Business Corporation Law and § 230 -a (5) of the Public Health Law. The Hearing Committee believes that annulment goes beyond revocation in that the corporation will be treated as if it never validly existed from day one and it will be unable to collect on any accounts receivable. The Hearing Committee concludes that annulment is the appropriate penalty under the circumstances.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The factual allegations and the specifications of misconduct contained in the Statement of Charges (Ex. 2) are **SUSTAINED**; and
2. Respondent CMORS Medical P.C.'s Certificate of Incorporation is hereby **ANNULLED**; and
3. This Order shall be effective on personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

DATED:

, New York
, 2011

REDACTED

DONALD TEPLITZ, D.O. (Chair)
PAUL TWIST Jr., M.D.,
RUTH HOROWITZ, Ph.D.

CMORS Medical, P.C.
2130 Grand Concourse Suite B1
Bronx, N.Y. 10458

Mark L. Furman, Esq.
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New York, N.Y. 10017

John Thomas Viti, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street- 4th Fl.
New York, N.Y. 10007

Ex 1
1-7-11 mdoNEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCTIN THE MATTER
OF
CMORS MEDICAL P.C.NOTICE
OF
HEARINGTO: CMORS MEDICAL P.C.
2130 Grand Concourse, Suite B1
Bronx, New York 10458

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §21 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on September 27 2010 , at 10:00 a.m., at the Offices of the New York State Department of Health, Fourth Floor, 90 Church Street New York NY 10007 , and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. An Officer or Director of the Corporation shall appear in person at the hearing and must be represented by counsel, who shall be an attorney admitted to practice in New York State. The Corporation has the right to produce witnesses and evidence on its behalf, to issue or have subpoenas issued on its behalf in order to require the production of witnesses and documents, and it may cross-examine witnesses and examine evidence produced against it. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here _____

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to New York State Department of Health. Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c). The Corporation shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or

appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR CERTIFICATE OF INCORPORATION AS A PROFESSIONAL SERVICE CORPORATION LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED SUSPENDED, OR ANNULLED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
August 4, 2010

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: John Thomas Viti
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, New York, NY 10007
(212) 417-4450

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NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCTIN THE MATTER
OF
CMORS MEDICAL, P.C.STATEMENT
OF
CHARGES

The Respondent, CMORS Medical, P.C. ("CMORS"), was authorized as a physician professional service corporation by the New York State Department of State. The Respondent is subject to the jurisdiction of the State Board for Professional Medical Conduct, pursuant to Section 1503(d) of the New York Business Corporation Law.

FACTUAL ALLEGATIONS

A. Pursuant to Section 1503 of the New York Business Corporation Law, a professional service corporation may only be organized by one or more individuals who are duly authorized by law to practice medicine in New York State. The certificate of incorporation must state the name and residence of all the original shareholders, directors and officers of such corporation. In or about November 2006, a certificate of incorporation was filed with the New York State Department of State for CMORS.

REDACTED

, an individual duly licensed to practice medicine in the State of New York, was identified in the certificate of incorporation as the original sole shareholder, director, and officer of the Respondent. Although the certificate of incorporation bears the purported signature REDACTED, Dr.

REDACTED neither signed nor authorized any individual to use his signature on the certificate of incorporation and he never was a shareholder, director, or officer of Respondent.

1. Respondent failed to comply with the applicable state licensing requirements for a physician professional service corporation in that:

- a. No person duly authorized to practice medicine organized and/or caused the Respondent to be organized as a physician professional service corporation.
- b. The certificate of incorporation for CMORS failed to state the name and residence of the shareholders, directors and officers of Respondent.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

WILLFULLY FAILING TO COMPLY WITH SECTION 1503 OF THE BUSINESS CORPORATION LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(12) by willfully failing to comply with section 1503 of the business corporation law, as alleged in the facts of:

1. Paragraphs A, A1(a) and A1(b).

SECOND SPECIFICATION

WILLFULLY AND/OR GROSSLY NEGLIGENTLY FAILING TO COMPLY WITH SUBSTANTIAL PROVISIONS OF STATE LAW GOVERNING THE PRACTICE OF MEDICINE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) by willfully and/or grossly negligently failing to comply with substantial provisions of state law governing the practice of medicine, as alleged in the facts of:

2. Paragraphs A, A1(a) and A1(b).

DATE: August 4, 2010
New York, New York

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct